Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Text

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ACTION EB-07

INFO OCT-01 ISO-00 AF-10 ARA-14 EA-09 EUR-12 NEA-10
IO-14 STRE-00 AGRE-00 CEA-01 CIAE-00 COME-00
DODE-00 FRB-01 H-02 INR-07 INT-05 L-03 LAB-04
NSAE-00 NSC-05 PA-02 EPG-02 AID-05 SS-15 STR-04
ITC-01 TRSE-00 USIA-15 PRS-01 SP-02 FEAE-00
OMB-01 OIC-02 /155 W
----------097162 271309Z /46
R 271125Z JUN 77
FM USMISSION GENEVA
TO SECSTATE WASHDC 8622
INFO AMEMBASSY BRUSSELS
AMEMBASSY TOKYO

UNCLAS SECTION 1 OF 2 GENEVA 5207

USEEC

PASS STR AND TREASURY

E.O. 11652: NA
TAGS: GATT, ETRD
SUBJ: MINUTES OF SPECIAL GATT COUNCIL ON ZENITH CASE

FOLLOWING IS PARTIAL TEXT OF RESTRICTED GATT DOCUMENT C/M/121 OF 22 JUNE, MINUTES OF JUNE 16 GATT COUNCIL WHICH CONSIDERED THE WORKING PARTY REPORT ON THE ZENITH CASE:

QUOTE. 1. UNITED STATES/ZENITH CASE (L/4508)

THE CHAIRMAN RECALLED THAT THE COUNCIL ESTABLISHED A WORKING PARTY ON THE UNITED STATES/ZENITH CASE AT ITS MEETING ON 23 MAY. THE REPORT OF THE WORKING PARTY WAS CIRCULATED IN DOCUMENT L/4508.

MR. FARNON (NEW ZEALAND), CHAIRMAN OF THE WORKING PARTY, SAID THAT ALL BUT ONE MEMBER OF THE WORKING PARTY AGREED THAT THE JAP-
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ANESE TAX REBATE OR REMISSION OF COMMODITY TAXES ON EXPORTS OF CERTAIN CONSUMER ELECTRONIC PRODUCTS WAS IN FULL ACCORD WITH THE PROVISIONS OF GATT. THEY ALSO AGREED THAT, SHOULD THE DECISION BY THE UNITED STATES CUSTOMS COURT BE UPHELD AND SHOULD COUNTER-VAILING DUTIES BE IMPOSED ON THESE PRODUCTS, SUCH IMPOSITION WOULD BE IN CONTRAVENTION OF THE PROVISIONS OF THE GATT, IN-CLUDING ARTICLE VI:4 AND THE NOTE TO ARTICLE XVI, AND WOULD

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

CONSTITUTE A PRIMA FACIE CASE OF NULLIFICATION OR IMPAIRMENT OF JAPAN'S RIGHTS UNDER THE GENERAL AGREEMENT. THEY WERE ALSO OF THE VIEW THAT THE UNITED STATES CUSTOMS COURT DECISION AND THE SUBSEQUENT UNITED STATES ACTION WAS ALREADY IN VIOLATION OF THE GATT AND HAD A SERIOUS ADVERSE TRADE IMPACT UPON THE JAPANESE EXPORTS TO THE UNITED STATES IN QUESTION. HE ALSO STATED THAT THE UNITED STATES REPRESENTATIVE TOOK NOTE OF THE VIEWS EXPRESSED BUT REFRAINED FROM COMMENTING ON THE LEGAL ASPECTS OF THE CASE WHICH WAS BEING APPEALED BY HIS ADMINISTRATION. IN CONCLUSION, HE STATED THAT THE WORKING PARTY EXPRESSED SERIOUS CONCERN REGARDING THE IMPLICATIONS OF THE UNITED STATES CUSTOMS COURT DECISION AND ITS CONSEQUENCES FOR WORLD TRADE, THE MTN AND THE GATT SYSTEM. CONCERN WAS ALSO EXPRESSED ABOUT THE DANGER OF PROLIFERATION OF SUCH ACTION WITH RESPECT TO OTHER PRODUCTS AND OTHER CONTRACTING PARTIES.

THE REPRESENTATIVE OF JAPAN SAID THAT THE REPORT OF THE WORKING PARTY SUMMARIZED ACCURATELY JAPAN'S VIEWS IN THIS MATTER. HE POINTED OUT THAT THE UNITED STATES ACTION WAS ALREADY HAVING SERIOUS EFFECTS ON JAPAN'S TRADE AND EXPRESSED THE HOPE THAT THE UNITED STATES ACTION WOULD BE TERMINATED AT THE EARLIEST OPPORTUNITY. HE CONSIDERED THAT THE COUNCIL SHOULD KEEP THE MATTER UNDER CLOSE REVIEW SO THAT APPROPRIATE ACTION COULD BE TAKEN IN THE LIGHT OF DEVELOPMENTS.

SEVERAL REPRESENTATIVES ASSOCIATED THEMSELVES WITH THE VIEWS IN
UNCLASSIFIED

THE REPORT EXPRESSED UNANIMOUSLY BY THE UNITED STATES TRADING PARTNERS ON THE LEGAL ASPECTS OF THE CASE. THEY ALSO EXPRESSED CONCERN AT THE SERIOUS SITUATION WHICH HAD BEEN CREATED BY THE DECISION OF THE UNITED STATES CUSTOMS COURT. THEY WERE ENCOURAGED BY THE FACT THAT THE UNITED STATES AUTHORITIES WERE APPEALING THE DECISION AND APPEALED TO THE UNITED STATES NOT TO IMPOSE COUNTER-VAILING DUTIES IN CONTRAVENTION OF THE GENERAL AGREEMENT. THEY ALSO EXPRESSED CONCERN AT THE POSSIBLE PROLIFERATION OF ACTIONS OF THIS KIND AFFECTING OTHER PRODUCTS AND OTHER CONTRACTING PARTIES. THE REPRESENTATIVE OF THE EUROPEAN COMMUNITIES IN PARTICULARSTRESSED THAT IF COMMUNITY EXPORTS HAD BEEN AFFECTED THE THE COMMUNITY WOULD HAVE RESORTED TO THE PROVISIONS RELATING TO NULLIFICATION OR IMPAIRMENT OF BENEFITS UNDER THE GENERAL AGREEMENT AND WOULD NOT TAKE A PASSIVE ATTITUDE.

SEVERAL REPRESENTATIVES CONSIDERED THAT IN VIEW OF THE IMPORTANCE OF THE MATTER, THE COUNCIL SHOULD KEEP IT ON ITS AGENDA IN ORDER TO TAKE APPROPRIATE ACTION IN THE LIGHT OF FURTHER DEVELOPMENTS.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

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UNCLASSIFIED

PAGE 01 GENEVA 05207 02 OF 02 271259Z
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OMB-01 OIC-02 /155 W
----------097356 271311Z /46
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INFO AMEMBASSY BRUSSELS
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UNCLAS SECTION 2 OF 2 GENEVA 5207

THE REPRESENTATIVE OF THE UNITED STATES STATED THAT HIS DELEGATION SHARED THE DEEP CONCERN EXPRESSED BY OTHER DELEGATIONS WITH REGARD TO THE CUSTOMS COURT DECISION IN THIS CASE. THE DECISION DID NOT REPRESENT A POSITION OF THE EXECUTIVE BRANCH OF THE UNITED STATES GOVERNMENT AND A REVERSAL OF THE COURT'S HOLDING WAS BEING VIGOROUSLY PURSUED. AGAINST THIS BACKGROUND HE CONSIDERED IT INAPPROPRIATE TO COMMENT ON SOME OF THE VIEWS EXPRESSED BY OTHER DELEGATIONS. THE UNITED STATES RECOGNIZED ITS OBLIGATIONS UNDER THE GATT AND WOULD DO EVERYTHING POSSIBLE TO HONOUR THESE OBLIGATIONS. HE NOTED THAT THE UNITED STATES HAD NOT THUS FAR ACTUALLY APPLIED COUNTERVAILING DUTIES TO THE PRODUCTS IN QUESTION.

IN VIEW OF THE IMPORTANCE OF THE MATTER HE AGREED THAT IT WOULD BE APPROPRIATE FOR THE COUNCIL TO KEEP IT UNDER REVIEW, SO THAT IT COULD, IF NECESSARY, REVERT TO THE MATTER IN THE LIGHT OF DEVELOPMENTS.

HE THEN REFERRED TO THE COMMENTS REGARDING THE DISADVANTAGES OF OF DOMESTIC PROCEDURES INVOLVING JUDICIAL REVIEW, AS RECORDED IN PARAGRAPH 13 OF THE REPORT OF THE WORKING PARTY. HIS DELEGATION
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 GENEVA 05207 02 OF 02 271259Z

BELIEVED THAT THESE COMMENTS CONSTITUTED AN INAPPROPRIATE CRITICISM OF THE UNITED STATES CONSTITUTIONAL SYSTEM OF GOVERNMENT, WHICH WAS BASED ON A SEPARATION OF POWERS. JUDICIAL REVIEW OF

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

ADMINISTRATIVE DECISIONS WAS A COMMON ELEMENT THROUGHOUT THE ADMINISTRATION OF THE UNITED STATES LAWS AND THE JUDICIAL SYSTEMS OF MANY OTHER COUNTRIES. IN ADDITION, UNDER UNITED STATES LAW, JUDICIAL REVIEW WAS AVAILABLE TO ALL PARTIES IN A DISPUTE, AND THEREFORE, IN THE CASE OF TRADE DECISIONS, TO BOTH IMPORTERS AND DOMESTIC PRODUCERS. IN THIS CONNEXION, HE REFERRED TO THE PROVISIONS OF ARTICLE X, PARAGRAPH 3, OF THE GENERAL AGREEMENT.

THE REPRESENTATIVE OF THE EUROPEAN COMMUNITIES REPLIED THAT IT WAS THE WAY IN WHICH THE UNITED STATES DOMESTIC PROCEDURES WERE OPERATED, INCLUDING THE JUDICIAL REVIEW, WHICH HAD LED TO THE PRESENT SITUATION. HE EXPLAINED THAT THE COMMENTS MADE BY THE EUROPEAN COMMUNITIES IN THIS RESPECT WERE OF A GENERAL NATURE AND DID NOT CONCERN ONLY COUNTERVAILING DUTIES NOR THE POSSIBILITY OF HAVING RECOURSE TO A TRIBUNAL. HIS COMMENTS RELATED TO THE LEGAL PROVISIONS AND PROCEDURES CONCERNING TRADE, AS A WHOLE, WHICH WERE APPLIED IN THE UNITED STATES AND IN PARTICULAR TO THE PRACTICAL RESULTS OF THESE RULES UNDER THE TRADE ACT. SUCH PROVISIONS LED EASILY AND BY AN ALMOST AUTOMATIC PROCESS TO SITUATIONS SUCH AS THE ONE UNDER DISCUSSION. HE THOUGHT THAT THE UNITED STATES ADMINISTRATION RECOGNIZED THAT THE SUSPENSION OF CUSTOMS EVALUATION PROVIDED BY THE LEGISLATION WAS NOT A HAPPY PROCEDURE IN THIS CASE. HE EXPRESSED DOUBTS AS TO THE MECHANISM UNDER WHICH FUNDAMENTAL GATT RULES RECOGNIZED BY THE UNITED STATES ADMINISTRATION COULD BE PUT INTO QUESTION. HE BELIEVED THAT THE PRESENT SITUATION WAS NOT SIMPLY A RESULT OF A COURT DECISION BUT RATHER OF A SYSTEM WHICH LED TO A MULTIPLICITY OF PROCESSES HARASSING TRADE OF THIRD COUNTRIES.

THE REPRESENTATIVE OF THE UNITED STATES EXPRESSED APPRECIATION
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 GENEVA 05207 02 OF 02 271259Z

FOR THE CLARIFICATION GIVEN BY THE REPRESENTATIVE OF THE EUROPEAN COMMUNITIES AND STRESSED THAT IT WAS NOT THE UNITED STATES SYSTEM OF JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS THAT WAS THE PROBLEM.

THE COUNCIL ADOPTED TE
RT OF THE WORKING PARTY.

THE COUNCIL ALSO EXPRESSED GRAVE CONCERN AT THE SERIOUS IMPLICATIONS OF THE UNITED STATES CUSTOMS COURT DECISION AND ITS CONSEQUENCES FOR WORLD TRADE, THE MTN AND THE GATT SYSTEM ITSELF. ACCORDINGLY, THE COUNCIL DECIDED TO KEEP THE MATTER UNDER CLOSE REVIEW AND, FOR THAT REASON, TO KEEP IT ON ITS AGENDA IN ORDER TO TAKE SUCH ACTION AS MIGHT BE APPROPRIATE IN THE LIGHT OF FURTHER DEVELOPMENTS.

THE CHAIRMAN ADDED THAT THE DECISION OF THE COUNCIL TO KEEP THE MATTER ON ITS AGENDA WOULD NOT MEAN THAT THE ITEM WAS INCLUDED AUTOMATICALLY IN EACH FUTURE COUNCIL AGENDA, BUT RATHER THAT ANY

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

MEMBER OF THE COUNCIL AT ANY TIME COULD ASK FOR ITS INCLUSION
AND THAT THE COUNCIL, WHEN ADOPTING THE AGENDA, WOULD INCLUDE
THE ITEM, IF SO REQUESTED. UNQUOTE.SORENSON

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Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COMMITTEE MEETINGS, MEETING REPORTS
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Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Format: TEL
From: GENEVA
Handling Restrictions: n/a
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Legacy Key: link1977/newtext/t19770615/aaaaamxc.tel
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Office: ACTION EB
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Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
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Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2023871
Secure: OPEN
Status: NATIVE
Subject: MINUTES OF SPECIAL GATT COUNCIL ON ZENITH CASE FOLLOWING IS PARTIAL TEXT OF RESTRICTED GATT DOCUMENT C/M/121 OF 22 JUNE, MINUTES OF JUNE 16 GATT COU NCIL WHICH CON
TAGS: ETRD, GATT, ZENITH
To: STATE
Type: TE
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Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009